

TITLE 828 STATE BOARD OF DENTISTRY

Proposed Rule LSA Document #10-237

Digest

Amends 828 IAC 0.5-1 to implement rules based on House Enrolled Act 1172 (P.L.134-2008) concerning definitions of “direct supervision” and prescriptive supervision”, definitions concerning dental assistants, definitions related to the administration of local anesthesia by dental hygienists, and definitions related to coronal polishing and application of caries prevention agents. Amends 828 IAC 0.5-2-4 to establish the fees for the application and renewal of a dental anesthetics permit for dental hygienists established by House Enrolled Act 1172 (P.L.134-2008). Amends 828 IAC 1-1 to implement rule changes based on House Enrolled Act 1172 (P.L.134-2008) concerning professional conduct and competency of dentists, the supervision of dental hygienists and dental assistants, and responsibility for supervision. Amends 828 IAC 1-2 to implement rule changes based on House Enrolled Act 1172 (P.L.134-2008) concerning professional conduct and competency of dental hygienists, the practice of dental hygiene, the direct supervision of and prescriptive supervision granted to dental hygienists, and the locations for the practice of dental hygiene. Adds 828 IAC 3-2 to implement rules based on House Enrolled Act 1172 (P.L. 134-2008), including establishing education and training requirements, application requirements, renewal requirements, for the issuance and renewal of a dental hygiene anesthetic permit, and the administration of local anesthetics. Adds 828 IAC 6 to establish requirements for coronal polishing by dental assistants, application of caries prevention agents by dental assistants, and supervision of dental assistants.

Rule 1. Definitions

SECTION 1. 828 IAC 0.5-1-6.1 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-6.1 "Charitable dental care clinic" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10

Sec. 7. "Charitable dental care clinic" means a fixed dental clinic operated by a charitable organization within the meaning of Section 501(c)(3) of the internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of health care, including dental services, and that serves as a funding mechanism for providing those services.

SECTION 2. 828 IAC 0.5-1-6.2 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-6.2 "Coronal polishing" defined

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 7. "Coronal polishing" is defined as the use of a prophylaxis cup or occlusal polishing brush attached to a slow speed hand piece to polish the coronal surface of teeth.

SECTION 3. 828 IAC 0.5-1-7.1 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-7.1 "Dental assistant" defined

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 7. "Dental assistant" has the meaning set forth in IC 25-14-1-1.5.

SECTION 4. 828 IAC 0.5-1-7.2 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-7.2 "Dental hygiene anesthetic permit" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-14-1-3.1; IC 25-13-1-10.6; IC 25-13-1-11

Sec. 7. "Dental hygiene anesthetic permit" means a credential issued to a licensed dental hygienist to administer local dental anesthetics under the direct supervision of a licensed dentist.

SECTION 5. 828 IAC 0.5-1-7.3 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-7.3 "Dental hygienist" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-2; IC 25-14-1-1.5

Sec. 7. "Dental hygienist" has the meaning set forth in IC 25-13-1-2(a).

SECTION 6. 828 IAC 0.5-1-7.4 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-7.4 "Direct supervision" defined

Authority: IC 25-13-1-5 IC 25-14-1-13

Affected: IC 25-13-1-2; IC 25-14-1-1.5; IC 25-13-1-10:

Sec. 7. "Direct supervision" has the meaning as set for in IC 25-13-1-2(i) for dental hygienist and IC 25-14-1-1.5 for dental assistants.

SECTION 7. 828 IAC 0.5-1-9.1 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-9.1 "Local dental anesthetics" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10.6

Sec. 7. "Local dental anesthetics" means a drug or drugs administered by an intra-oral block or infiltration injection into the oral tissues of a patient for elimination of sensation, especially pain, and does not include nitrous oxide or similar anesthetics.

SECTION 8. 828 IAC 0.5-1-9.2 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-9.2 "Prescriptive supervision" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-2; IC 25-13-1-10

Sec. 7. "Prescriptive supervision" has the meaning set forth in IC 25-13-1-2(j).

SECTION 9. 828 IAC 0.5-1-9.3 IS ADDED TO READ AS FOLLOWS:

828 IAC 0.5-1-9.3 "Public health setting" defined

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected:

Sec. 7. "Public health setting" has the meaning set forth in IC 25-13-1-2(h).

SECTION 10. 828 IAC 0.5-2-4 IS AMENDED TO READ AS FOLLOWS:

828 IAC 0.5-2-4 Dental hygiene fees

Authority: IC 23-1.5-2-9; IC 23-1.5-2-10; IC 25-1-8-2; IC 25-13-1-5; IC 25-14-1-13;
IC 25-13-1-10.6

Affected: IC 25-13-1-8; IC 25-14-1-10

Sec. 4. The board shall charge and collect the following fees related to the practice of dental hygiene:

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|---|-----------------|
| (1) Application for licensure | \$100 |
| (2) Repeat law examination only | \$25 |
| (3) License renewal | \$50 biennially |
| (4) Dental hygiene intern permit application | \$50 |
| (5) Dental hygiene intern permit renewal | \$25 |
| (6) Verification of dental hygiene licensure to another state | \$10 |
| (7) Duplicate wall license | \$10 |
| (8) Reinstatement of inactive license | \$100 |
| (9) Application for dental hygiene anesthetic permit | \$25 |
| (10) Renewal of dental hygiene anesthetic permit | \$25 |

(State Board of Dentistry; 828 IAC 0.5-2-4; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1181; filed Oct 8, 2002, 12:40 p.m.: 26 IR 376; filed Mar 23, 2006, 10:15 a.m.: 29 IR 2539)

SECTION 11. 828 IAC 1-1-15 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-1-15 Professional conduct, competency; physical or mental examination

Authority: IC 25-14-1-13

Affected: IC 25-1-9-9

Sec. 15. (a) Dental incompetence or improper conduct of a dentist includes, but is not limited to, any one (1) or any combination of the following acts:

- (1) Practicing while under the influence of alcohol or other drugs which impair skill or judgment.
- (2) Practicing with a physical disability, mental disability, disease, or disorder which impairs skill or judgment for the dental procedure being performed.

- (3) Practicing while knowingly afflicted with a serious disease which could be transmitted to the patient.
- (4) Operating an office or treatment facility which is lacking the necessary equipment and generally prevailing standards of sanitary or sterilization procedures.
- (5) Providing drugs or access to drugs to someone for use other than in the proper course of dental diagnosis or treatment.
- (6) Performing a treatment or procedure which violates acceptable standards of practice and results in failure or is detrimental to the patient.
- (7) Engaging in conduct constituting gross negligence or repeatedly failing to meet minimum standards of performance in diagnosis or treatment as measured against generally prevailing professional standards.
- (8) Practicing or offering to practice beyond the scope permitted by law.
- (9) Permitting or delegating the performance of a procedure to one not qualified by education, training, or licensure to undertake such procedure.
- (10) Failing to inspect:
 - (A) dental services during the course of their performance;
 - (B) completed and delivered dental prosthetic appliances; or
 - (C) completed dental restorations.
- (11) Failing to be present in the dental facility to properly supervise treatment of patients, provided that such supervision has not been delegated to another dentist.
- (12) Failing to keep adequate dental records.
- (13) Failing to submit a complete report to the board as required by section 22 of this rule.
- (14) Performing professional services which have not been duly authorized by the patient or the patient's legal guardian.
- (15) Providing treatment for a patient if the dentist is not prepared to handle any emergencies resulting from such treatment or failing to refer the patient to a practitioner willing to perform such emergency treatment.
- (16) Failing to maintain records of an examination, diagnosis, or treatment performed. Such information must be entered in the patient's records within ten (10) days after the examination, diagnosis, or treatment is performed.
- (17) Signing an incomplete prescription form.
- (18) Entering a contract with a third party in which the dentist may not inform the patient about the diagnosis and the treatments possible.
- (19) Failing to provide the required direct or prescriptive supervision of a dental hygienist or dental assistant.**
- (20) Failing to maintain documentation of the examination and prescribed dental care for patient care provided by a licensed dental hygienist under the dentist's prescriptive supervision.**
- (21) Permitting a dental assistant to perform coronal polishing or apply medicaments for the control or prevention of dental caries without first verifying that the dental assistant has completed the requirement in 828 IAC 6.**
- (b) Any dentist holding a general anesthesia-deep sedation or light parenteral conscious sedation permit:
 - (1) who fails to comply with 828 IAC 3; or

(2) who lacks the ability, skill, or knowledge to competently use general anesthesia, deep sedation, or light parenteral conscious sedation;
is subject to disciplinary action under IC 25-1-9-9.

(c) Any dentist who utilizes general anesthesia-deep sedation or light parenteral conscious sedation without a permit is subject to disciplinary action by the board under IC 25-1-9-9. The fact that the patient was not injured by the use of general anesthesia, deep sedation, or light parenteral conscious sedation is not a defense to this subsection.

(d) The board may order a licensed dentist to submit to a reasonable physical or mental examination if his or her physical or mental capacity to practice safely is at issue in a disciplinary proceeding. The choice of the practitioner is subject to approval by the board.

(e) Dentists shall exercise reasonable care and diligence in the conduct of research and shall utilize generally accepted scientific principles and current professional theory and practice. New or experimental procedures, techniques, and theories shall be utilized only with proper research safeguards, informed consent, and peer review of the procedures or techniques.

(State Board of Dentistry; 828 IAC 1-1-15; filed Apr 25, 1983, 8:52 a.m.: 6 IR 1085; errata, 7 IR 700; filed Oct 16, 1985, 3:57 p.m.: 9 IR 521; filed Aug 29, 1986, 2:30 p.m.: 10 IR 20; filed Dec 2, 1987, 9:34 a.m.: 11 IR 1286; filed Jun 8, 1992, 5:00 p.m.: 15 IR 2236; filed Oct 12, 1993, 5:00 p.m.: 17 IR 400; filed Oct 14, 1993, 5:00 p.m.: 17 IR 402; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; readopted filed Oct 4, 2007, 3:36 p.m.: 20071031-IR-828070047RFA)

SECTION 12. 828 IAC 1-2-13 IS AMENDED TO READ AS FOLLOWS:

828 IAC 1-2-13 Competency; physical or mental examination

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-14-1-19.1

Sec. 13. (a) The board may determine "dental hygiene competency" on a case by case basis using comparable or equal standards as used in determining qualifications for initial licensure.

(b) "Dental hygiene incompetency or improper conduct of dental hygienists" includes but is not limited to any one (1) or any combination of the following acts:

- (1) Practicing while under the influence of alcohol or other drugs which impair skill or judgment.
- (2) Practicing with a physical disability, mental disability, disease, or disorder which impairs skill or judgment.
- (3) Practicing while knowingly *[sic.]* afflicted with a serious disease which could be transmitted to the patient.
- (4) Repeatedly performing a treatment or procedure which is beyond the skill or knowledge of the practitioner with the results being detrimental to the patient.
- (5) Repeatedly performing a treatment or procedure which violates acceptable standards of practice and results in failure or is detrimental to the patient.
- (6)
 - (A) Engaging in conduct constituting gross negligence; or

- (B) repeatedly failing to meet standards of performance in treatment as measured against generally prevailing peer performance.
 - (7) Practicing or offering to practice beyond the scope permitted by law.
 - (8) Administering local dental anesthetics without first being issued a dental hygiene anesthetic permit from the board.**
 - (9) Providing patient care without the required direct or prescriptive supervision of a licensed dentist as required by IC 25-13-1-10.**
 - (c) The Indiana state board of dental examiners may order a dental hygienist to submit to a reasonable physical or mental examination if his or her physical or mental capacity to practice safely is at issue in a disciplinary proceeding. The choice of the practitioner to administer the examination is subject to approval by the board.
 - (d) As a condition of reinstatement of a suspended or revoked license the board may, at its discretion, require the applicant for reinstatement to submit to all or part of the examination for initial licensure or to a similar examination.
- (State Board of Dentistry; 828 IAC 1-2-13; filed Apr 25, 1983, 8:52 am: 6 IR 1086; errata, 7 IR 700; readopted filed Apr 11, 2001, 3:21 p.m.: 24 IR 2896; readopted filed Oct 4, 2007, 3:36 p.m.: 20071031-IR-828070047RFA)*

SECTION 13. 828 IAC 3-2-1 IS ADDED TO READ AS FOLLOWS:

828 IAC 3-2-1 Administration of local dental anesthetics; requirements

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10.6; IC 25-13-1-11

Sec. 1. (a) A dental hygienist currently licensed to practice dental hygiene in Indiana may be issued a permit to administer local dental anesthetics under the direct supervision of a licensed dentist if the following requirements are met:

- (1) Successfully completed the educational requirements set forth in section 2 of this rule or a substantially equivalent educational program approved by the board.**
 - (2) Submitted an application for a dental hygiene anesthetic permit in the form and manner required by the board.**
 - (3) Submitted the fee set forth in 828 IAC 0.5-2-4(9).**
 - (4) Furnish evidenced satisfactory to the board that all qualifying requirements have been met including:**
 - (A) An official diploma or certificate showing completion of the educational requirements in subdivision (1).**
 - (B) An official document showing the date that the diploma was issued by the education institution or certificate with the date of the course given.**
 - (C) An official report showing the score attained on the local anesthesia examination required in 828 IAC 3-2-2(b).**
 - (D) Submit verification of their dental hygiene license and registration to administer local anesthesia from any and all states.**
- (b) A permit issued under this rule expires on the same date as the dental hygiene license issued to the dental hygienist under 828 IAC 1 and must be renewed by submitting an application for renewal in the form and manner required by the board and the fee set forth in 828 IAC 0.5 -2-4(10).**

SECTION 14. 828 IAC 3-2-2 IS ADDED TO READ AS FOLLOWS:

828 IAC 3-2-2 Educational requirements for a dental hygiene local anesthetics permit

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10.6; IC 25-13-1-11

Sec. 2. (a) An applicant for a dental hygiene anesthetic permit shall complete an educational program or curriculum accredited by the Commission on Dental Accreditation of the American Dental Association that includes, at a minimum, fifteen (15) hours of didactic instruction and fourteen (14) hours of laboratory work covering the following subject areas:

- (1) Theory of pain control.**
- (2) Selection of pain control modalities.**
- (3) Anatomy.**
- (4) Neurophysiology.**
- (5) Pharmacology of local anesthesia.**
- (6) Pharmacology of vasoconstrictors.**
- (7) Psychological aspects of pain control.**
- (8) Systemic complications.**
- (9) Techniques of maxillary and mandibular anesthesia.**
- (10) Infection control.**
- (11) Local anesthesia medical emergencies.**
- (12) A demonstration of clinical competency.**

(b) As part of the educational program the dental hygienist will be required to take and pass the North East Regional Board (NERB) or a substantially equivalent regional or state examination prior to completion of the program.

SECTION 15. 828 IAC 3-2-3 IS ADDED TO READ AS FOLLOWS:

828 IAC 3-2-3 Dental hygienist who attended an out of state program

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10.6; IC 25-13-1-11

Sec. 3. A dental hygienist who attended an out of state education program or curriculum to administer local dental anesthetics accredited by the Commission on Dental Accreditation of the American Dental Association or approved by the Board must provide a syllabus of course work, completed by the applicant, from the program and have completed requirements that are equal to or greater than the educational requirements as specified in 828 IAC 3-2-1 and 828 IAC 3-2-2.

SECTION 16. 828 IAC 3-2-4 IS ADDED TO READ AS FOLLOWS:

828 IAC 3-2-4 Display of dental hygiene anesthetic permit

Authority: IC 25-13-1-5; IC 25-14-1-13

Affected: IC 25-13-1-10.6; IC 25-13-1-11

Sec. 4. A permit issued under this rule shall be conspicuously displayed in the facility where the dental hygienist is practicing.

ARTICLE 6. DENTAL ASSISTANTS

Rule 1. Caries Prevention and Coronal Polishing; Requirements; Limitations

SECTION 17. 828 IAC 6-1-1 IS ADDED TO READ AS FOLLOWS:

828 IAC 6-1-1 Caries prevention

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 1. (a) A dental assistant who has been employed in a dental practice for a minimum of one (1) year or has graduated from a program accredited by the Commission on Dental Accreditation of the American Dental Association and who has completed the requirements in subsection (b) may apply medicaments for the control or prevention of dental caries under the direct supervision of a licensed dentist.

(b) A dental assistant may not apply medicaments for the control or prevention of dental caries until satisfactory completion of an educational program or curriculum accredited by the Commission on Dental Accreditation of the American Dental Association or approved by the board in the following order that includes, at a minimum:

(1) Nine (9) hours of didactic instruction covering the following subject areas:

- (A) Ethics and jurisprudence.**
- (B) Reasons for fluoride.**
- (C) Systemic fluoride.**
- (D) Topical fluoride.**
- (E) Toxicity of fluoride.**
- (F) Fluoride application.**
- (G) Infection control.**

(2) Two (2) hours of laboratory work including a mannequin and two (2) live patients in topical fluoride applications; and

(3) Clinical competency demonstrated on a minimum of five (5) patients under the direct observation of an Indiana dentist or dental hygienists whose license is in good standing. An affidavit certifying the competency signed by the supervising dentist and a copy given to the employee.

(4) Upon receipt of the affidavit, signed by the supervising dentist, the education program shall issue a certificate of completion to be publicly displayed in the dental office.

SECTION 18. 828 IAC 6-1-2 IS ADDED TO READ AS FOLLOWS:

828 IAC 6-1-2 Coronal polishing

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 2. (a) A dental assistant who has been employed in a dental practice for a minimum of one (1) year or has graduated from a program accredited by the Commission on Dental Accreditation of the American Dental Association and who has completed the requirements in subsection (b) may polish the coronal surface of teeth under the direct supervision of a licensed dentist.

(b) A dental assistant may not polish the coronal surface of teeth until satisfactory completion of an educational program or curriculum accredited by the Commission on Dental Accreditation of the American Dental Association or approved by the board in the following order that includes, at a minimum:

(1) Five (5) hours of didactic instruction covering the following subject areas:

- (A) Ethics and jurisprudence.**
- (B) Plaque and material alba.**
- (C) Intrinsic and extrinsic stain.**
- (D) Abrasive agents.**
- (E) Use of a slow speed hand piece, prophylaxis cup, and occlusal polishing brush.**
- (F) Theory of selective polishing.**
- (G) Infection control.**

(2) Two (2) hours of laboratory work including a mannequin and two (2) live patients in the use of a slow speed hand piece, prophylaxis cup, and occlusal polishing brush and hand dexterity.

(3) Clinical competency demonstrated on a minimum of five (5) patients under the direct observation of an Indiana dentist or dental hygienists whose license is in good standing. An affidavit certifying the competency signed by the supervising dentist and a copy given to the employee.

(4) Upon receipt of the affidavit, signed by the supervising dentist, the educational program shall issue a certificate of completion to be publicly displayed in the dental office.

SECTION 19. 828 IAC 6-1-3 IS ADDED TO READ AS FOLLOWS:

828 IAC 6-1-3 Verification of education by supervising dentist

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 3. (a) Before permitting a dental assistant to apply medicaments for the control or prevention of dental caries the supervising dentist shall verify that the dental assistant has completed the educational requirements for caries prevention set forth in section 1 of this rule.

(b) Before permitting a dental assistant to polish the coronal surface of teeth the supervising dentist shall verify that the dental assistant has completed the educational requirements for coronal polishing set forth in section 2 of this rule.

(c) Documentation that a dental assistant has completed the educational requirements to apply medicaments for the control and prevention of dental caries

or to polish the coronal surface of teeth and the certificate of completion shall be publicly displayed in the dental office.

SECTION 20. 828 IAC 6-1-4 IS ADDED TO READ AS FOLLOWS:

828 IAC 6-1-4 Limitation on procedures

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 4. Except for the procedures described in sections 1 and 2 of this rule, procedures allocated to a licensed dental hygienist under IC 25-13-1 may not be delegated to a dental assistant.

SECTION 21. 828 IAC 6-1-5 IS ADDED TO READ AS FOLLOWS:

828 IAC 6-1-5 Requirements for out of state programs

Authority: IC 25-14-1-13

Affected: IC 25-14-1-23

Sec. 5. (a) A dental assistant who has completed an out of state dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association or an out of state continuing education program with the equivalent hours and curriculum as stated in 828 IAC 6-1-1 and 828 IAC 6-1-2, to apply medicaments for the control or prevention of dental caries or to polish the coronal surface of teeth, must provide a syllabus of course work successfully completed by the applicant.

(b) The coursework must be equal to or greater than the requirements specified in 828 IAC 6-1-1 and 828 IAC 6-1-2.

(c) If the out of state curriculum is less than the Indiana requirements to apply medicaments for the control or prevention of dental caries or to polish the coronal surface of teeth then the dental assistant must complete the laboratory work and clinical competency portion of Section 1 at a board approved course in Indiana and obtain a certificate of completion from the educational program. The dental assistant shall display the diploma from the program accredited by the Commission on Dental Accreditation of the American Dental Association or certificate of completion from the board approved course.